

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

KHALIL IBRAHIM ABBUS, II, )  
vs. )  
Plaintiff, )  
vs. )  
WARDEN CHAD MILLER; C/O )  
KIMBERLY SULLIVAN; and )  
C/O ROY THORNHILL, )  
Defendants. )  
No. CIV-14-214-C

## ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff brought the present action pursuant to 42 U.S.C. § 1983, seeking recompense for alleged violations of his constitutional rights. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this action was referred to United States Magistrate Judge Suzanne Mitchell. Judge Mitchell entered a Report and Recommendation on October 7, 2014, to which Plaintiff timely objected.

The facts and law are accurately set out in the Magistrate Judge's Report and Recommendation and there is no purpose to be served in repeating them yet again. Judge Mitchell recommended Defendants Sullivan and Thornhill be dismissed as Plaintiff failed to exhaust administrative remedies as to those Defendants. Judge Mitchell noted that Plaintiff had properly exhausted claims against Defendant Miller. In his Objection, Plaintiff argues that because he filed appeals to the Administrative Review Authority, he properly exhausted as to grievances 13-05; 13-63; 13-67; 13-68; 13-75; 13-82; 13-85; and 13-100. Plaintiff argues that simply because the grievances were returned unanswered does not mean

he did not properly exhaust. Of the grievances specified by Plaintiff, six were returned because he failed to properly follow the grievance procedure. As Judge Mitchell noted in the R&R, if the grievance is not properly presented, it is not exhausted. See Fields v. Okla. State Penitentiary 511 F.3d 1109, 1112 (10th Cir. 2007) (“To exhaust administrative remedies an inmate must properly comply with grievance procedures; substantial compliance is insufficient.”). Thus, Plaintiff did not properly exhaust grievances 13-05; 13-63; 13-75; 13-82; 13-85; and 13-100. Judge Mitchell found that Plaintiff prevailed on 13-67 and therefore exhaustion was unnecessary. Finally, as to 13-68, the issues raised in that grievance are unrelated to the issues Plaintiff pursues in this action. Consequently, after considering the arguments raised by Plaintiff in his Objection, the Court finds no error in Judge Mitchell’s recommendation.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge (Dkt. No. 23), and for the reasons announced therein, finds Defendants Sullivan and Thornhill are entitled to Judgment. Plaintiff’s claim against Defendant Miller remains and this matter is referred back to Judge Mitchell for pretrial scheduling and management.

IT IS SO ORDERED this 5th day of December, 2014.



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ROBIN J. CAUTHRON  
United States District Judge